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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID CARLETON, an individual,)	
)	Case No. CV 07-5924 (JSW)
Plaintiff,)	
)	JOINT CASE MANAGEMENT
v.)	STATEMENT
)	
)	
504 GAP, INC. DISABILITY PLANS and)	Date: July 11, 2007
THE GAP, INC., in its capacity as Plan)	Time: 1:30 p.m.
Administrator,)	Courtroom:
)	Hon. Jeffrey S. White
Defendants.)	United States District Judge
)	
)	
)	
)	

1 Pursuant to the Federal Rules of Civil Procedure, Rule 26(f), Local Rule 16-9 and this
2 Court's Order, the parties respectfully submit this Joint Case Management Statement.

3 **1. Jurisdiction and Service**

4 This is an action for disability insurance benefits and related relief under the
5 Employee Retirement Income Security Act, 29 U.S.C. §§ 1001 *et seq.* (“ERISA”). The subject-
6 matter jurisdiction of this Court is not disputed, and arises under 28 U.S.C. § 1331 (federal
7 question) and 29 U.S.C. § 1132(a). There are no disputed issues regarding personal jurisdiction
8 or venue, and all parties have been served.

9 **2. Factual and Legal Summary of Action**

10 **a. The Parties**

11 Plaintiff David Carleton was a software engineer employed by defendant The
12 Gap, Inc., prior to his injury and his claim for disability insurance benefits, and a participant in
13 its benefits plans. Defendant 504 Gap, Inc. Disability Plans (the “Plan”) is an employee welfare
14 benefits plan within the meaning of ERISA, 29 U.S.C. §§ 1002 and 1003. The Gap, Inc. is a
15 party defendant solely in its capacity as the formal Plan Administrator and fiduciary of the Plan,
16 and not in its capacity or as a result of its status as Mr. Carleton’s former employer.

17 **b. Relief Sought**

18 Plaintiff David Carleton asserts a single cause of action for recovery of group
19 disability insurance benefits from October 15, 2007 to the date of judgment. Mr. Carleton has
20 very recently returned to work for The Gap, Inc. as an independent contractor, on an hourly
21 basis, and working largely from his home. Defendants contend that Carleton is not entitled to
22 any further benefits under the terms and conditions of the Plan.

23 **c. Brief Chronology of Facts and Statement of Principal Factual Issues in Dispute**

24 Mr. Carleton has undergone three spinal fusion surgeries, the most recent of
25 which was on November 3, 2005. Defendants approved his claim for long-term disability
26 benefits effective October 16, 2005.
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1 By letter dated November 13, 2006 defendants informed plaintiff that they had
2 determined that he was no longer entitled to benefits under the Plan, and that his claim was
3 terminated effective December 1, 2006. Plaintiff requested that defendants review and
4 reconsider that determination. By letter dated December 28, 2007, defendants stated their
5 determination that Mr. Carleton was entitled to further benefits from December 1, 2006 through
6 October 15, 2007, but not thereafter.

7 Plaintiff contends that his medical records and information demonstrate that he
8 continues to be disabled and entitled to benefits under the Plan. Defendants contend that the
9 medical records and information, including video surveillance, in Mr. Carleton's file do not
10 support his entitlement to benefits beyond October 15, 2007.

11 **3 Legal Issues**

12 In accordance with the Court's applicable Standing Order, following is a brief statement,
13 without extended legal argument, of the disputed points of law, including reference to specific
14 statutes and decisions.

15 **(a) "Standard of Review" by this Court:**

16 The parties agree that the Court should employ the "*de novo*" standard of review.

17 **(b) Entitlement to Benefits and Reinstatement in Plan:**

18 Plaintiff contends that his medical records and information demonstrate that he
19 continues to be disabled and entitled to benefits under the Plan. Defendants contend that the
20 medical records and information, including video surveillance, in Mr. Carleton's file do not
21 support his entitlement to benefits beyond October 15, 2007.

22 **4. Motions**

23 No motions are pending.

24 The parties anticipate that this case will be tried to the Court by trial briefs and
25 response briefs under Rule 52 of the Federal Rules of Civil Procedure. This is the procedure
26 established in 1999 by the Ninth Circuit and employed by district courts since then. *Kearney v.*
27 *Standard Ins. Co.*, 175 F.3d 1084 (9th Cir.)(*en banc*), *cert. den.* 120 U.S. 398 (1999). *See*
28

1 *Gonzalez v. Guarantee Mut. Life*, 1999 WL 329096, at 3 (N.D. Cal. 1999) ("Kearney 'prescribes a
 2 'novel form of trial' to be conducted in ERISA benefit cases."); *See also Thompson v. Standard*
 3 *Ins. Co.*, 167 F.Supp. 2d 1186, 1187 (D. Or. 2001)(under ERISA, motions for judgment more
 4 appropriate, under *Kearney*, than motions for summary judgment.) *Cf. Sabbatino v. Liberty Life*
 5 *Assur. Co. of Boston*, 286 F. Supp. 2d 1222, 1234 (N.D. Cal. 2003)(Wilken, J.)(deciding cross-
 6 motions for summary judgment under Rule 56 and ordering further trial by motion for judgment
 7 under Rule 52).¹

8 **5. Amendment of Pleadings**

9 The parties do not anticipate any amendments to the pleadings.

10 **6. Evidence Preservation**

11 The parties represent that they have taken steps to preserve evidence relevant to
 12 the issues reasonably evident in this action as of the date when the filing of the litigation was
 13 known.

14 **7. Disclosures**

15 Defendants contend that Rule 26(a)(1)(E)(i) of the Federal Rules of Civil
 16 Procedure explicitly exempts actions for review on an administrative record from initial
 17 disclosures. Prior to this litigation, defendants produced their claim file to plaintiff in accordance
 18 with the requirements of ERISA.

19 **8. Discovery**

20 Neither party has taken any discovery to date, and none is anticipated.

21 **9. Class Actions**

22 Not applicable.

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 28 ¹ Under this procedure, unlike cross-motions for summary judgment, the Court weighs the evidence and determines disputed questions of fact. *See, e.g., Kearney*, 175 F.3d at 1095 n.6 (findings of fact subject to appellate review)

1 **10. Related Cases**

2 The parties are unaware of any related cases.

3 **11. Relief**

4 **a. Relief Sought by Plaintiff**

5 Plaintiff seeks recovery of disability insurance benefits from October, 2007 to the date of
6 judgment, calculated under the terms and conditions of the Plan, reinstatement in the Plan, and
7 attorneys' fees and expenses under ERISA. The gross monthly benefit is approximately \$4,600.
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10 **b. Relief Sought by Defendants**

11 Defendants seeks judgment and dismissal with prejudice of this matter, and attorneys'
12 fees and costs under 29 U.S.C. § 1132 to the extent permissible under the law.

13 **12. Settlement and ADR**

14 The Court has granted the parties' joint request to exempt this case from the
15 Court's ADR program.

16 **13. Consent to Magistrate Judge For All Purposes**

17 The parties did not consent to assignment to a Magistrate Judge.

18 **14. Other References**

19 This case is not suitable for, nor do the parties consent to, reference to binding arbitration
20 or a special master. This case is not properly referable to the Judicial Panel on Multi-district
21 Litigation.
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23 **15. Narrowing of Issues**

24 The parties have agreed to the applicability of the *de novo* standard of review. The
25 parties do not believe that further narrowing of the issues will be helpful or necessary prior to the
26 anticipated cross-motions for complete resolution of the case by trial to the Court.
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under the "clearly erroneous" standard of Rule 52, rather than the *de novo* review of summary judgment decisions under Rule 56).

1 **16. Expedited Schedule**

2 The parties do not believe that this case can or should be handled on an expedited basis
3 with streamlined procedures, beyond the significant streamlining employed under *Kearney*.

4 **17. Scheduling**

5 The parties respectfully suggest the following briefing schedule:

6 a. The parties will simultaneously file motions for judgment, to be heard on the
7 Court's regular law and motion date, upon 42 days' notice, subject to notice and direction by the
8 Court that hearing on the motion shall be rescheduled to a different date better suited to the
9 Court's calendar;

10 b. The parties will file their Opposition briefs 28 days before the hearing;

11 c. The parties will file their Reply Briefs, if any, 14 days before the hearing.
12

13 **18. Trial**

14 The parties estimate that trial of this matter will require a hearing of less than one hour.

15 **19. Disclosure of Non-party Interested Entities or Persons**

16 Pursuant to Civil L.R. 3-16, plaintiff certifies that as of this date, other than the named
17 parties, there is no such interest to report.

18 Pursuant to Civil L.R. 3-16, defendants certify that there are no persons, associations of
19 persons, firms, partnerships, corporations (including parent corporations) or other entities, not
20 already parties to the action, that (i) have a financial interest in the subject matter in controversy
21 or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a
22 party that could be substantially affected by the outcome of this proceeding.

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The parties are unaware of any other such matters at this time.

JULIAN M. BAUM
THOMAS J. FUCHS
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RONALD K. ALBERTS
TAD A. DEVLIN
GORDON & REES LLP

by /s/ Tad A. Devlin
TAD A. DEVLIN
Attorneys for Defendants

DECLARATION RE CONCURRENCE OF SIGNATORIES
UNITED STATES DISTRICT COURT, N.D. CAL.
GENERAL ORDER 45

The undersigned ECF filer hereby attests that concurrence in the filing of the foregoing document has been obtained from each of the other signatories whose signature is indicated by the notation “ /s/ [name of signatory].”

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: July 3, 2008

/s/ Julian M. Baum

Julian M. Baum